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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,455	11/05/2003	Alain Maupas	11016-0022	6382
22902 7590 05/11/2009 CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005				
EXAMINER				
GILBERT, WILLIAM V				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
05/11/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/700,455

**Applicant(s)**

MAUPAS, ALAIN

**Examiner**

William V. Gilbert

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-19, 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

This is a final Office action. Claims 5 and 20 have been cancelled. Claims 1-4, 6-19 and 21 are examined.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

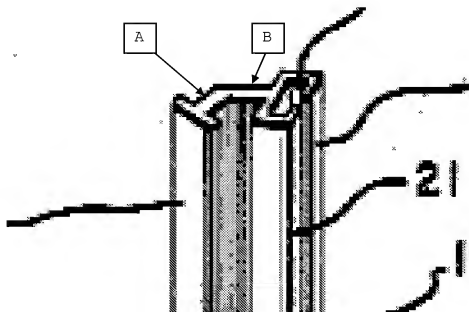
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-4, 6-9, 11-14, 19 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kessler (U.S. Patent No. 3,736,599).

Claim 1: Kessler discloses a liquid retaining wall comprising two consecutive vertically disposed prefabricated panels (Fig. 4: 3), a low belt (31) and a high belt (Fig. 5: 45) assembly means (Fig. 5: 61) holding together the panels allowing one panel to move angularly relative to the other about a vertical axis (see Col. 1, lines 1-10 where the members can move relative to each other which would include rotation, no matter how little), angle determining means (Fig. 3: 19) for ensuring the panels are at a determined angular orientation relative to each other, stiffening means (Fig. 4: T-shaped portions attached to panels 3) for stiffening the panels once they have been assembled, the panels are planar (as shown) and are rectilinear, the angle determining means comprises a part having two arms (see "A" and "B", respectively from Fig. 3 from Kessler, below) that are mounted on two section members of the low belt (as shown in Fig. 3, portion 19 would be on the low belt) that form a determined angle relative to each other. The prior art of record does not disclose a plurality of high and low members as claimed, however, it would have been obvious at the time the invention was made to a person having ordinary skill in the art

as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04.



**Figure 4 from Kessler**

Claim 2: as shown, the panels are identical.

Claim 3: means for leveling the heights of two panels (Fig. 5: 47).

Claim 4: the low and high belts are rigidly connected to each other by a portion of the assembly means (61).

Claim 6: as shown, the section members extend over the length of the panel assembly (see Fig. 4: generally).

Claim 7: the sections of the low belt are rectilinear (as shown in Figs. 4 and 5) and form a channel section gutter with a double wall (33, 35) extending along one of its longitudinal sides to define a slot in which the panel is engaged.

Claim 8: the angle determining means is in two consecutive gutters (as shown in Fig. 4, means 19 is in two adjacent gutters) formed by members (33, 35 and 37) formed by two consecutive section members of the low belt.

Claim 9: the low belt is stiffened by reinforcing means (53).

Claim 11: The high belt is made of strips (see "Q" and "R" from attached Fig. 5 from Kessler, below) and section members ("S", "T" and "U") fixed to the strips. Kessler does not disclose that the strips and section members extend over a length that is at least as long as the length of a panel on which they are fitted. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the length as claimed because applicant failed to state a criticality for the necessity of the limitation and the prior art of record is capable of being designed to meet the limitation as claimed.

See MPEP 2144.04(IV) (A) citing *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338 (Fed. Cir. 1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

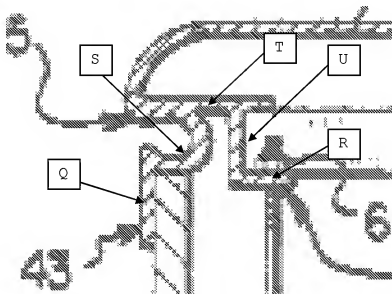


Figure 5 from Kessler

Claim 12: As the strips and section members are one piece, they are engaged in each other.

Claim 13: the section members form a gutter. While the embodiment in Fig. 5 does not disclose that portion 19 would be in two consecutive gutters formed by members, above, this feature would be obvious to one of ordinary skill in the art with respect to the embodiment in Fig. 4. While the angle determining means may not be completely in the gutter, it would be within the portion indicated as "U" above).

Claim 14: the section member is stiffened by reinforcing means (49).

Claim 19: the prior art of record discloses the claimed invention except for the thickness of the panel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the thickness of the panel as claimed because applicant failed to state a criticality for the necessity of the limitation and the prior art of record is capable of being designed to meet the limitation as claimed. See MPEP 2144.04(IV) (A) citing *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338 (Fed. Cir. 1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform



differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Claim 21: the wall is a swimming pool wall (as shown in Fig. 1).

**Claims 1, 16 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Maupas (U.S. Patent No. 5,896,715).

Claim 1: Maupas discloses a liquid retaining wall comprising two vertically disposed prefabricated panels (1), assembly means (Fig. 8: 7, 9) for assembling the panels, a low belt (30, see Col. 6, lines 20-25 where member 30 can be placed at the bottom end of member 7) and a high belt (Fig. 9: 30), the assembly means holds the panels together while allowing one panel to move relative to another about a vertical axis (prior to member 9 being installed) angle determining means (Fig. 7: 20), stiffening means (40), the panels are planar (as shown) and can be used in a rectilinear outline of the wall, and the angle determining means comprises two arms (see "M" and "N" from Fig. 7 from Maupas, below) that are attached to the section members and form a determined angle. The prior art of record does not disclose a plurality of high and low members as claimed, however, it would have been obvious at the time the invention

was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04. Further, depending on the placement of the low belt with relation to the angle determining means, the angle determining means can be attached on two members of the low belt.

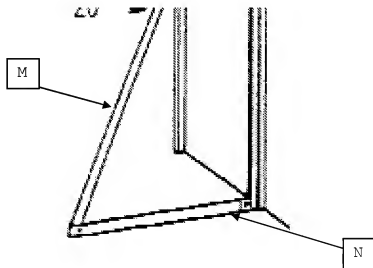


Figure 8 from Maupas

Claim 16: the wall has two lateral edges (c1) having a folded flange (proximate 3a), the flanges are folded towards the

same side of the panel, and the assembly comprises an internal first section (9) between the two adjacent flanges of the panels, and a second section (7) fitted over the flanges and penetrate into the low and high belts (30: see Fig. 9 as shown), and the panels can move relative about the vertical axis (prior to the installation of member 30).

Claim 17: the system will rest on a surface (e.g. the ground) which would function as the leveling means.

**Claims 10 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kessler in view of Glonek (U.S. Patent No. 4,464,802).

Claims 10 and 15: the prior art of record discloses the claimed invention except for the reinforcing means in the gutter of the low and high belts. Glonek discloses reinforcing means (concrete 104, 110) in the gutters of the low and high belts of panels (the low belt is 44 and the high belt is 42 and 108). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the system in Kessler reinforced using such means because these reinforcing means are well known in the art for properly supporting underground pools and Kessler notes that the pool can equally function as an underground pool (Col. 2, lines 30-40). By

pouring concrete in the system in Kessler, concrete would be in the gutters of the low and high belts.

**Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Maupas in view of Davis (U.S. Patent No. 2,446,323).

Claim 18: The prior art of record discloses the claimed invention except for a pin connecting two panels that pierces through the bottom portions of the flanges of the panels. Davis discloses a panel system (Fig. 6: A) that is connected with a pin (9a, a screw is a type of pin) through holes in the flange (1). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use pins to connect the panels in Kessler as claimed in order to further secure the panels to prevent unwanted movement. See also Fig. 4, element 8 where holes can be placed at the bottom of the panel.

#### ***Response to Arguments***

2. The following addresses applicant's remarks/arguments dated 28 January 2009:

**Claim rejection - 35 USC §102 and §103:**

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as applicant amended the claims. The explanation and rebuttal to the arguments of the amended claims are presented in the rejection section above.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./  
Examiner, Art Unit 3635  
/Basil Katcheves/  
Primary Examiner, Art Unit 3635